IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 508 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PESI D BARIA

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioners No. 1-6

MR BY MANKAD, APP for Respondent No. 1

MR SB PANDIT for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. This Revision Application is filed by the accused of Criminal Case No. 5244 of 1996 pending before the Chief Judicial Magistrate, First Class, Navsari, being aggrieved and dissatisfied by an order of learned Chief Judicial Magistrate, Navsari, passed on 6th October,

2000, rejecting the application of the accused for discharging them.

2. As per the brief facts of the case, complainant respondent No.2 herein filed a Criminal complaint against the present petitioners under Sections 499 and 500 of the Indian Penal Code for the publication in the newspaper, which in the eye of the complainant was defamatory. At this juncture, we need not going in details of the fact but suffice it to say that complainant and the accused petitioners herein were contesting a matter regarding a Trust before Joint Charity Commissioner, being Judicial Misc.Application No.s 33/95, 34/95 and 35/95. Upon a common judgment of these Misc. Applications, as delivered by the Joint Charity Commissioner, Baroda, which was passed on 4th of May, 1996, some publication, at the instance of the present petitioners, was got published in the newspaper in the shape of advertisement, and that is the subject matter of the complaint.

3. At the initial stage, as it appears that on issuing the process by the learned Chief Judicial Magistrate against the petitioners, a Criminal Misc. Application No. 4528 of 1997 came to be filed by the present petitioners in this High Court for quashing the Criminal Complaint No. 5244 of 1996 filed in the Court of Chief Judicial Magistrate, First Class and for setting aside the order of issuance of process which was passed on 23rd of September, 1996. On 14th of August, 1997, the Criminal Misc. Application No. 4528 of 1997 came to be withdrawn by the present petitioners and this Court passed the order that the petition stands disposed of as withdrawn. Thereafter, the petitioners filed an Application at Exh. 19 on 8th of December, 1997 stating that the petitioners got published the above said advertisement as per the decision of the Joint Charity Commissioner and, therefore, the complainant had no reasonable cause to file the complaint under Sections 499 and 500 of the Indian Penal Code and that the case of the petitioners - accused originally was within the scope of Exception First, Fourth, Fifth, Eight and Ninth of Section 499 of the Indian Penal Code. The said application came to be dismissed by the learned Chief Judicial Magistrate on 6th of October, 2000 stating that whether the accused were entitled to benefit of Exception or not, could not be decided at that juncture and that the earlier Criminal Misc. Application No. 4528 of 1997 came to be withdrawn by the original accused present

petitioners and hence the learned Chief Judicial Magistrate, First Class, Navsari, refused the request of the petitioner to discharge them from Criminal Case No. 5244 of 1996.

5. Learned Advocate Mr.Zubin F.Bharda for petitioners, learned APP Mr. B.Y. Mankad for respondent No.1 State of Gujarat and learned Advocate Mr. S.B. Pandit for Respondent No.2 original complainant were heard.

6. Learned Advocate Mr. Bharda contended that in fact what is mentioned as defamatory in the complaint is nothing else but the reproduction, according to the accused, of what was decided by the Charity Commissioner in the above said three Applications and that this was the advertisement got published by the present applicants to inform the public at large about the decision of the Joint Charity Commissioner and hence the applicants were covered by the Exceptions of Sections 499 of the Indian Penal code.

7. Having heard learned counsel and perusing the record, the only question which arises is whether the learned Magistrate was authorised to discharge the accused at this juncture. Obviously, the case is instituted otherwise than of police report and charges are under Sections 499 and 500 of the Indian Penal Code triable by the summons trial on filing the complaint and after recording the verification, process is issued. Plea of the accused is still to be recorded. Now, whether at this juncture, in a cases instituted other wise than of police report, accused can be discharged. The facts of this case so far as this procedural aspect is concerned, is fully covered by a decision of the Apex Court in the matter of JOHN THOMAS vs. DR. K. JAGADEESAN, reported in (2001) 6 SCC 30, wherein the Apex Court in paras 8 and 9 observed as under :

> "8. Summons cases are generally of two categories: those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 of the Code is intended to cover those cases belonging to one category alone i.e. "summons cases instituted otherwise than upon complaints". The segment separated at the last part of the section by the words "and in any other case" is only a sub-category or division consisting of "summons cases instituted other wise than upon

> complaints". That sub-category is not intended to cover all summons cases other than those instituted on police report. In fact, Section 28 vivisects only "summons cases instituted otherwise than on complaints" into two divisions. One division consists of cases in which no evidence of a material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than one complaints wherein the evidence of material witnesses was recorded. But the power of the court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.
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> 9. The upshot of the above is that Section 28 of the Code has no application to cases instituted upon complaints. The present is a case which was instituted on a complaint. Hence, the endeavour made by the accused to find help from Section 258 of the Code is of no avail."

8. From the above it is clear that Section 258 of the Criminal Procedure Code which can be availed for discharging of the accused in the cases instituted on a police report cannot be availed when the case is instituted upon a complaint and, therefore, Section 258 of the Criminal Procedure Code has no application to the cases instituted upon complaint. Except Section 258, there is no provision in the Code of Criminal Procedure enabling the Magistrate to discharge the accused in cases instituted otherwise than on police report. Once the process is issued, the plea would be required to be recorded and the case will end either in acquittal or conviction. There is no stage statutorily provided by the Code of Criminal Procedure to discharge the accused so far as the cases instituted upon the complaint is concerned, and for this reason only, the interference in the order impugned passed by the learned Chief Judicial Magistrate, rejecting the application Exh.19 of the original accused to discharge them is not at all warranted and this Revision therefore is decided only on this point.

9. In this view of the matter, this Revision Application stands dismissed. Rule discharged. However, since the case is old one, learned Chief Judicial Magistrate, or any Magistrate, who is in-charge of the case, is directed to expedite the hearing and trial of Criminal Case No. 5244 if 1996, so far as possible. The

learned Magistrate shall also take into consideration the order passed by this Court in Misc. Criminal Application No. 4528 of 1999 regarding the exemption of the accused.

(J.R. Vora, J.)

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